

Issue: Qualification – Management Actions (Recruitment/Selection); Ruling Date: July 19, 2016; Ruling No. 2016-4383; Agency: Department of Corrections; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

QUALIFICATION RULING

In the matter of the Department of Corrections
Ruling Number 2016-4383
July 19, 2016

The grievant has requested a ruling on whether his April 20, 2016 grievance with the Department of Corrections (the agency) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for hearing.

FACTS

The grievant initiated his April 20, 2016 grievance to challenge the agency's selection process for an Equipment Repair/Warehouse Manager position in which he competed unsuccessfully. In this instance, the selection process consisted of two rounds of interviews. A standardized set of questions was asked of each applicant at both stages of the interview process, and each member of the interview panel recorded notes based on the answers that the applicant provided. The grievant, along with three other candidates, was selected to proceed to the second round of interviews. However, the grievant was ultimately not selected for the position. He argues that the agency misapplied hiring policy during this process in pre-selecting the successful candidate for the position. The agency disputes the grievant's claims and states that it properly followed competitive selection procedures, and ultimately selected the best-suited candidate as determined by the competitive selection process.

DISCUSSION

By statute and under the grievance procedure, complaints relating solely to issues such as the methods, means, and personnel by which work activities are to be carried out, as well as hiring, promotion, transfer, assignment, and retention of employees within the agency "shall not proceed to hearing" unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.¹ Further, the grievance procedure generally limits grievances that qualify for a hearing to those that involve "adverse employment actions."² Thus, typically, a threshold question is whether the grievant has suffered an adverse employment action. An adverse employment action is defined as a "tangible employment action constitut[ing] a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a

¹ Va. Code § 2.2-3004(C); *Grievance Procedure Manual* § 4.1(c).

² See *Grievance Procedure Manual* § 4.1(b).

significant change in benefits.”³ Adverse employment actions include any agency actions that have an adverse effect *on the terms, conditions, or benefits* of one’s employment.⁴ For purposes of this ruling only, it will be assumed that the grievant has alleged an “adverse employment action” as to this grievance in that it appears the position he applied for would have been a promotion.

In this case, the grievant alleges that policy was misapplied during the selection process for the Equipment Repair/Warehouse Manager position. For an allegation of misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy. State hiring policy is designed to ascertain which candidate is best suited for the position, not just to determine who might be qualified to perform the duties of the position.⁵ Moreover, the grievance procedure accords much deference to management’s exercise of judgment, including management’s assessment of applicants during a selection process. Thus, a grievance that challenges an agency’s action like the selection in this case does not qualify for a hearing unless there is sufficient evidence that the resulting determination was plainly inconsistent with other similar decisions by the agency or that the assessment was otherwise arbitrary or capricious.⁶

Here, the grievant asserts that the agency misapplied policy by pre-selecting the successful candidate for the Equipment Repair/Warehouse Manager position. In support of his claim of pre-selection, the grievant provides an email from another employee who had an interview for the position. This employee states that, on March 1, 2016, the day of the second round of interviews, he encountered the candidate who would receive the job, and this person had asked where his office would be. Further, this employee indicates that the successful candidate was already “in the system” and appeared to be working in the position as of March 8, 2016. On March 14, 2016, an email was sent to the grievant, advising him that he was not selected for the position.

EDR’s review of the relevant documentation does not reveal evidence that would support the grievant’s assertion that the successful applicant was pre-selected for the position without regard to merit or suitability. Even assuming as true the grievant’s assertions outlined above, neither action demonstrates that the successful candidate was pre-selected for the Equipment Repair/Warehouse Manager position. At an interview, inquiring where one’s office would be located is a natural and relevant consideration for a candidate in determining whether to accept an offered position. Additionally, even if the successful candidate had accepted the position prior to the agency’s notifying the grievant that he did not receive the job, this fact in itself does not demonstrate that the successful candidate was pre-selected.

³ Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761 (1998).

⁴ Holland v. Wash. Homes, Inc., 487 F.3d 208, 219 (4th Cir. 2007).

⁵ See Department of Human Resource Management (DHRM) Policy No. 2.10, *Hiring*.

⁶ See *Grievance Procedure Manual* § 9. Arbitrary or capricious is defined as a decision made “[i]n disregard of the facts or without a reasoned basis.” *Id.*

Here, the notes recorded by the panel appear to reflect a good faith consideration of the relative merits of all candidates interviewed. The successful candidate possessed the qualifications posted for the position and was the first choice of both members of the selection panel. Both of the panel members noted his excellent knowledge, skills, and abilities for the position, and strong communication skills. The grievant was ranked as the second choice of both panel members for the position. While many positive aspects regarding the grievant's ability to perform the job were noted, such as "good correctional experience," and "good KSA," this fact alone does not raise a sufficient question as to whether the decision of the selection panel was arbitrary or capricious.

"Arbitrary or capricious" means that management made a decision without regard to the facts, by pure will or whim, one that no reasonable person could make after considering all available evidence. If a selection is fairly debatable (meaning that reasonable persons could draw different conclusions), it is not arbitrary or capricious. As the grievance procedure accords much deference to management's exercise of judgment, including management's assessment of applicants during a selection process, EDR will not second-guess management's decisions regarding the administration of its procedures absent evidence that the agency's actions are plainly inconsistent with other similar decisions within the agency or otherwise arbitrary or capricious.

While the grievant may disagree with the agency's assessments, he has presented insufficient evidence to suggest that the agency's selection decision disregarded the facts or was otherwise arbitrary or capricious. Indeed, in reviewing the candidates' application materials, EDR can find nothing to indicate that the grievant was so clearly the better candidate that the selection of the successful candidate disregarded the facts. Rather, it appears the agency based its decision on a good faith assessment of the relative qualities of both candidates. As such, EDR concludes that the grievance does not raise a sufficient question that pre-selection may have tainted the process.

EDR's qualification rulings are final and nonappealable.⁷



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⁷ Va. Code § 2.2-1202.1(5).